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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,883	03/31/2004	Iain Kalfas	DUQ-002RCE2(DEP5290)	9073
959 7590 01/05/2010 LAHIVE & COCKFIELD, LLP FLOOR 30, SUITE 3000 ONE POST OFFICE SQUARE BOSTON, MA 02109			EXAMINER COMSTOCK, DAVID C	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 01/05/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/815,883	<b>Applicant(s)</b> KALFAS ET AL.	
	<b>Examiner</b> DAVID COMSTOCK	<b>Art Unit</b> 3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 12, 13, 19 and 21-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14-18, 20, 27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 7-11, 14-18, 20, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Schluzas (2002/0143327; of record).

Schluzas discloses the claimed invention including a connector 12 comprising first and second housing components, 26, 24 (see, e.g., Figs. 2-4). The housing components define bore holes 65, 42. The bore holes are for receiving rods, e.g., 16, 14. Each housing component comprises a locking element, e.g., 44, for securing the rods in the bore holes. A longitudinal axis through one bore hole is capable of being offset (e.g., in a sagittal plane) from a longitudinal axis through the other bore hole. For example, using rods of different diameters creates an offset distance between the respective longitudinal axes (*c.f.*, the central axis of each rod in Fig. 4 and consider where the central axis would be when a larger diameter rod is used in a bore hole). The distance is capable of being varied, for example, by using rods of different diameters. The housing components are movably attached to each other. The second housing component includes a coupling rod 28, extending in a direction that is transverse to the longitudinal axis of the bore hole. A clamping mechanism, e.g., 82, secures the first

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component in a selected position relative to the second component. The bore holes are non-perpendicular and capable of being rotated so as to be either parallel or non-parallel (e.g., by rotating housing 26 relative to housing 24). The housings can be moved laterally relative to each other, and this motion can also be considered to be "vertical" depending on the orientation of the device and/or patient. In addition, the component 26 can be moved in a "vertical" direction relative to component 24 by selecting a component having a coupling rod and/or rod with a different diameter, or by loosening or tightening the clamping mechanism. The connector is capable of receiving rods that could be used for any desired anatomical location.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schluzas (2002/0143327; of record) in view of Olerud (5,053,034; of record).

Schluzas discloses the claimed invention except for the teeth on the engaging inside and outside surfaces. Olerud discloses a similar connector 1 and teaches that teeth 9 and 19 can be provided on engaging inner and outer surfaces of the connector to allow for accurate and secure adjustability (see, e.g., Figs. 2, 3 and 7 and col. 1, lines 38-62). It would have been obvious to one having ordinary skill in the art at the time the

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invention was made to provide the connector of Schluzas with teeth on engaging inside and outside surfaces, in view of Olerud, in order to allow for accurate and secure adjustability of the connector.

### ***Response to Arguments***

Applicant's arguments filed 07 July 2009 have been considered but are not persuasive.

In response to applicant's argument that Schluzas allegedly fails to disclose a housing component for connecting spinal rods supporting different regions of the spine, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Here, the device of Schluzas comprises a housing component for connecting spinal rods capable of supporting different vertical regions of the spine. For example, the device of Schluzas comprises a housing connecting spinal rods that support different lateral, vertical regions of the spine (i.e., there is more than one vertical region in that there are the opposed lateral vertical regions about each rod). In addition, the housing is capable of connecting rods in an offset configuration due to the articulated connection of the housing such that different vertical regions of the spine are capable of being supported by each rod connected by the housing.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710 (a detailed message should be left if Examiner is unavailable). If attempts to reach the Examiner by telephone or voicemail are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733